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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,367	12/04/2003	Frank Richard Cichocki JR.	ETH5110USNP	6984

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ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C.  
P. O. BOX 10064  
MCLEAN, VA 22102-8064

EXAMINER
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LANG, AMY T

ART UNIT	PAPER NUMBER
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3731

NOTIFICATION DATE	DELIVERY MODE
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07/18/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Dbeltran@rmhlaw.com  
LGaughan@rmhlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/727,367	<b>Applicant(s)</b> CICHOCKI, FRANK RICHARD	
	<b>Examiner</b> AMY T. LANG	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 3,5 and 7-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/29/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 4, and 6** are rejected under 35 U.S.C. 102(b) as being anticipated by Burton (US 4,159,720).

With regard to **claim 1**, Burton discloses a braided suture having proximal and distal ends (see entire document). As shown in Figure 14, the suture comprises a hollow inner passageway coaxial with the braided suture (column 4, lines 46-49). A prescribed fluid runs through this passageway to facilitate healing of the damaged tissue (column 2, lines 13-18).

The hollow inner passageway comprises holes (102) that connect the inner passageway to the outer surface of the suture tube (column 4, lines 46-49; Figure 14). Each hole (102) comprises an outer opening along the outer surface of the suture and an aperture that connects to the outer opening and penetrates into the hollow inner passageway. Therefore, it is the examiner's position that the each outer opening of 102 overlaps the instantly claimed interstices and the each aperture of 102 overlaps the instantly claimed openings.

However, Burton does not specifically disclose wherein the distal end of the passageway is disposed between the proximal and distal ends of the braided suture. If

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this were not the case, then the distal end of the passageway would be open, allowing the fluid to directly flow into the passageway. However, Burton teaches that the ends of the suture absorb the fluid (column 5, lines 6-8). Therefore, since the fluid is absorbed, suture material must be present at the distal end to take in the fluid.

With regard to **claim 4**, it is the examiner's position that the inner passageway is a lumen of a tube.

With regard to **claim 6**, the apertures of 102 overlap the instantly claimed holes that connect the lumen (inner passageway) to the outer surface of the tube (outer surface of suture).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claim 2** is rejected under 35 U.S.C. 103(a) as being unpatentable over Burton (US 4,159,720) in view of Davis et al. (US 3,474,703).

Burton, as disclosed in paragraph 2 above and incorporated here by reference, discloses a suture comprising an inner lumen and a plurality of interstices along the outer surface. Burton further discloses wherein the suture is a wick and utilizes capillary action to move liquid along its length (Column 4, lines 21-45). However, Burton does not specifically disclose the suture as comprising a tube within the inner lumen.

Davis et al. (hereinafter Davis) also discloses a braided wick for transmitting fluids (column 1, lines 14-22). The wick advantageously comprises a hollow inner braid within an outer braid where the inner braid comprises openings between the braided filaments (column 3, lines 26-28, 44-45, 68-74). This provides an efficient method of transporting the fluid along the length of the wick through capillary action (column 3, lines 25-45). Davis teaches the flow of fluids is not restricted in either an axial or radial direction when utilizing a hollow inner tube (column 3, lines 35-36). Therefore, in view of this advantage, it would have been obvious at the time of the invention for the suture/wick of Burton to comprise an inner tube within the inner lumen as disclosed by Davis.

Although Davis does not specifically disclose the ratio of the outer diameter of the inner tube to the inner diameter of the tube, it would have been obvious to one of ordinary skill at the time of the invention for Davis to also comprise a tube diameter ratio of greater than 1.7, since it has been held that where the general conditions of a claim

are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art (*In re Aller*, 105 USPQ 233 (CCPA 1955)).

### ***Response to Arguments***

6. Applicant's arguments filed 04/29/2008 have been fully considered but they are not persuasive. Specifically, Applicant argues that Burton teaches the “wick” not a “braided suture” as a hollow monofilament. However, Burton teaches the wick is a suture (column 4, lines 21-31) and is braided (column 4, lines 32-33). Additionally, Burton specifically discloses the wick as a hollow monofilament (column 4, lines 46-49). Therefore, the wicks of Burton overlap the instantly claimed suture and clearly comprise braided, hollow monofilaments.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMY T. LANG whose telephone number is (571)272-9057. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

07/08/2008  
/Amy T Lang/  
Examiner, Art Unit 3731

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3731